

### REMARKS

The Office Communication mailed October 1, 2003 has been received and reviewed. Claims 1-36 are currently pending in the application. Claims 1-19, 21-28 and 31-33 have been amended herein. All amendments are made without prejudice or disclaimer. New claims 34-36 have been added. A substitute Specification and Sequence Listing are submitted herewith. It is submitted that no new matter is believed to have been entered. A petition to revive is also submitted herewith. Applicant responds to the Restriction Requirement with traverse, as remarked hereinafter. Reconsideration is respectfully requested.

#### **Petition to Revive**

This application went abandoned for an unintentional failure to respond to the Restriction Requirement October 1, 2003. The failure to respond to the Restriction Requirement resulted from a change in counsel for applicants. Due to the change in representation of applicants, present counsel did not receive, and was unaware of, the issuance of the Restriction Requirement of October 1, 2003. Thus, applicants are submitting herewith a petition to revive the application and the requisite supporting documents. Revival is respectfully requested.

#### **Amendments to the Specification**

Generally, amendments made to the Specification remove obvious typographical and grammatical informalities as well as insert sequence identifiers where required. The amendments do not surrender any scope of the Specification as-filed and are not believed to add new matter. Amendments to the claims, *inter alia*, remove multiple dependencies and correct grammatical informalities. Claim 12 has been amended to depend from claim 1.

A substitute sequence listing has also been submitted in compliance with 37 C.F.R. 1.821 and/or 1.825 to incorporate the sequence at paragraph [0095] of SV40 large T antigen (SEQ ID NO: 7).

### **Restriction Requirement**

The Office Communication of October 1, 2003 requires applicants to elect one of the asserted seven inventions. (*See*, Office Communication at page 2). Applicants elect the invention of Group I, including claims 1-11 and 22-25, with traverse, for the reasons hereinafter set forth.

The Office Communication stated that “[i]nventions I-III are unrelated,” and further that “each can be used in different methods requiring materially different method steps for use of each of the products.” (*Id.* at page 3). Group I contains claims 1 through 11 and 22 through 25 drawn to an isolated nucleic acid sequence encoding an apoptin associating proteinaceous substance (AAP). Applicants request that Group II (containing claims 12 through 16 and claim 18 drawn to isolated AAP) be joined and examined because translation and expression of the claimed nucleic acid sequences encoding AAP will inevitably yield the peptide of AAP. Thus, the search should be co-extensive and not be over-burdensome.

New claims 34-36 have been added. Claim 34 is directed to an isolated nucleic acid sequence encoding AAP, while claim 35 is directed to a process of using the isolated nucleic acid sequence encoding AAP.

Applicants have also amended the claims associated with Groups V through VII (i.e., claims 19-21 and claims 26-33) to clarify their dependency on Group I claims, since the claims are related as product and process of use. Applicants request rejoinder of these claims upon an indication of allowable subject matter in the Group I claims.

**CONCLUSION**

The present application is to be amended as previously set forth in an effort to conform more closely to U.S. practice. All amendments are made without prejudice or disclaimer. Generally, the amendments remove multiple dependencies from the claims. The amendments do not surrender any scope of any claim as originally filed. No new matter has been added. In view of the foregoing amendments and remarks, the claims should define patentable subject matter and prompt action on the merits of claims 1-36 is requested. If questions remain after consideration of the foregoing, the Office is kindly requested to contact applicants' attorney at the address or telephone number given herein.

Respectfully submitted,



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Enclosures: Appendices A and B  
Replacement Sheets